In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Misc. Petition No.666/1999
Karamat S/o Habal ***Versus*** State & Govind Detha

Date of Order ::: 24/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Prithviraj S.Rajawat)
Mr. Anil Mehta)
Mr. Brijesh Yadav) for petitioner (complainant)
Mr. Arun Sharma, Public Prosecutor for State.

Instant petition U/s 482 CrPC has been filed assailing order dt.24/02/99 whereby Sessions Judge, Ajmer, accepted application filed by respondent no.2 (accused) U/s 197(2) CrPC in Sess.Case No.26/97, holding that no cognizance can be taken against him without taking prior consent from competent authority and in absence whereof, the order taking cognizance by learned Magistrate for offence U/s 302, IPC, against him is not legally sustainable.

Facts, in brief, giving rise to instant petition are that respondent no.2 (accused) while holding post of Sub Inspector of Police, and posted as S.H.O. P.S. Christian-Ganj (Ajmer), received a letter of Urban Improvement Trust (“**UIT**”) making request through Superintendent of

Police to provide protection since the UIT had to take possession of public land from encroacher and on which Superintendent of Police directed him to join the enforcement team of UIT; along with whom, the police force under his supervision reached the spot of public land encroached on 16/02/90 and at that time, the mob including family members of Hubbal (deceased) started pelting stones upon members of police force and UIT personnel – in course whereof, in order to maintain peace, initially there was a lathi-charge but when the mob could not be controlled, respondent No.2 had to first fire in air but all in vain, therefore, he had no option except to fire which caused injury to Hubbal who was taken to hospital and succumbed to his injuries.

FIR-26/90 registered by police initially for offence U/S 307, IPC but since Hubbal died, it was converted into S.302 IPC. After investigation, police submitted negative report but after taking note of material and statements recorded U/s 161, CrPC, learned trial Magistrate took cognizance of offence U/S 302, IPC vide order dt.03/08/95 on the premise that Hubbal was not holding arms in his hand at the time of incident and on the facts came on record, there

was no occasion for respondent No.2(accused) to have used fire-arms and looking to over-all strength of police force present at the scene of occurrence, action of respondent no.2 (ccused) in using fire-arm causing death of Hubbal was his culpable act of commission of offence, as is being evident from contents of written report and statements recorded U/s 161, IPC.

Initially, respondent no.2 filed an application U/s 197, CrPC on 14/12/95 before learned Magistrate on which he endorsed a Note that after taking cognizance, the case stands committed to the Court of Sessions, which alone can consider the application U/s 197 CrPC – taking note whereof and hearing both the parties thereon, learned Sessions Judge while upholding the contention of respondent No.2 (accused) accepted the application U/s 197 CrPC and finally observed that act of the accused was in discharge of his official duties; hence is entitled for protection U/s 197 CrPC and in the absence of prior consent of competent authority as required under law, no cognizance could have been taken by learned Magistrate – as a consequence whereof, vide order dt.24/02/99, set aside the order passed by Magistrate taking cognizance of offence

U/s 302, IPC. Hence this petition.

Counsel for petitioner submits that while taking cognizance, the Magistrate has taken note of contents of written report, so also statements recorded U/s 161 CrPC, and finally observed that there was no occasion for respondent No.2 (accused) to have used fire-arm at the scene of occurrence where sufficient number of police personnel was present in order to control the mob and therefore, act of the accused was not in discharge of his official duty, rather was in dereliction of duty, for which he was not entitled to seek protection U/s 197 CrPC and according to Counsel, in such circumstances where firearm was used by the accused, certainly shows that it was not to control the mob but his intention was to kill Hubbal (deceased) who was not duly armed with weapon at the scene of occurrence and only because of firearm used by the accused, the deceased sustained grievous firearm injuries and finally died; in such circumstances, the accused is not required to take protection U/s 197 CrPC and the Court of Sessions committed serious error in accepting his application filed U/s 197 CrPC. In support, Counsel placed reliance upon

decisions of this Court in **Centre for Public Interest Litigation Vs. Union of India (2005(8) SCC 202) and Rakesh K.Mishra Vs. State of Bihar (2006(1) SCC 557**).

Despite service, none has appeared on behalf of respondent No.2.

I have considered contentions of Counsel for the complainant and the Public Prosecutor and with their assistance, examined material on record - on a perusal whereof, it reveals that on the request made to provide police protection as the UIT personnel were required to take possession of public land from the encroacher and in pursuance whereof, on the instructions of Superintendent of police, accused-respondent No.2 alongwith police force had accompanied with UIT enforcement team and reached the scene of occurrence in order to take possession of public land and his presence was with a view to maintain law and order situation - in course whereof, since there was a mob and their family members started pelting stones causing disturbance, therefore, initially there was lathi-charge and after use of fire in air, when despite it, mob was out of control, firearm was used by respondent-2 (accused) causing injuries to Hubbal

who succumbed to the injuries and later on died. After taking note of earlier decisions on the scope of Section 197 CrPC, Apex Court in **Rakesh K. Mishra Vs. State of Bihar (supra) observed:**

> **"6.** The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a

sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule.

> One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty: if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

Apex Court further observed :

> "The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned".

Thus, what has been observed by Apex Court in **Rakesh K. Mishra Vs. State of Bihar**

(supra) the words, “official duties”, implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty but it will not provide protective cover to every act or omission done by a public servant in service but restricts only to those acts or omissions which are done by a public servant in discharge of official duty.

In the facts of instant case, as observed above, respondent No.2 (accused) being a public servant while in discharge of official duties, he used fire-arm and it is not the case of complainant that it was used for his personal animosity or biasness or because of previous vengeance, or the deceased was identified for the purpose. This Court does not find any error in the order impugned while holding the accused (respondent NO.2) being entitled to protection U/s 197 CrPC, which does not call for interference.

Consequently, misc. petition fails and and is hereby dismissed. Record be sent back to the court below forthwith.

(**Ajay Rastogi), J.**